Office-Supreme Court, U.S.
FILED
JOHN F. DAVIS, CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1961

No. 525

HERBERT E. SAIER,

Petitioner,

vs.

STATE BAR OF MICHIGAN, An Association claimed to be a state agency, and MILTON E. BACHMANN, as Executive Secretary of the State Bar of Michigan and Individually, JOSEPH C. COX, as former Executive Assistant of the State Bar of Michigan, and Individually, and JOSEPH H. PLANCK, as Executive Assistant of the State Bar of Michigan and Individually, and RUSSELL A. SEARL, as attorney for the State Bar of Michigan and individually, and

THE MICHIGAN COURT OF THE STATE OF MICHIGAN and JOHN R. DETHMERS, as Justice of said Supreme Court and in his Individual capacity, and LELAND W. CARR, as Justice of said Supreme Court and in his Individual capacity, and HARRY F. KELLY, as Justice of said Supreme Court and in his Individual capacity, and TALBOT SMITH, as Justice of said Supreme Court and in his Individual capacity, and EUGENE F. BLACK, as Justice of said Supreme Court and in his Individual capacity, and GEORGE EDWARDS, as Justice of said Supreme Court and in his Individual capacity, and JOHN D. VOELKER, as ex-Justice of said Supreme Court and in his Individual capacity, and EDWARD M. SHARPE, as ex-Justice of said Supreme Court and in his Individual capacity,

Respondents.

BRIEF ON BEHALF OF RESPONDENTS SUPREME COURT OF MICHIGAN, COLLECTIVELY AND INDIVIDUALLY IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

PAUL L. ADAMS
Attorney General of Michigan

Joseph B. Bilitzke
Solicitor General of Michigan

Attorneys for Respondents
Supreme Court of Michigan

The Capitol
Lansing, Michigan

SPEAKER HINES AND THOMAS, INC., LANSING, MICH., 1961

TABLE OF CONTENTS

		Page
	Counter-Statement of Question Involved	iii
I	Counter-Statement of Facts	1
II	Argument	2
III	Conclusion	5

INDEX TO CASES CITED

Adair v. Bank of America Association, 303 US 358	2
Bradley v. Fisher, 80 US 335; 14 Wall. 335	2, 3
Barr v. Matteo, 360 US 569	2
Manning v. Ketcham, 58 F2d 948	3, 4
McShane v. Molodovan, 172 F2d 1016	3, 4
Spalding v. Vilas, 161 US 493	2

COUNTER-STATEMENT OF QUESTION INVOLVED

Are the members of the Supreme Court of Michigan, defendants herein, immune from civil liability for acts done in the course of their official duties as judicial officers?

The District Court answered this question "Yes."

The Circuit Court of Appeals, Sixth Circuit, answered this question "Yes."

Appellee answers this question "No."

Respondents answer this question "Yes."

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1961

No. 525

HERBERT E. SAIER,

Petitioner,

vs.

STATE BAR OF MICHIGAN, An Association claimed to be a state agency, and MILTON E. BACHMANN, as Executive Secretary of the State Bar of Michigan and Individually, JOSEPH C. COX, as former Executive Assistant of the State Bar of Michigan, and Individually, and JOSEPH H. PLANCK, as Executive Assistant of the State Bar of Michigan and Individually, and RUSSELL A. SEARL, as attorney for the State Bar of Michigan and individually, and

THE MICHIGAN COURT OF THE STATE OF MICHIGAN and JOHN R. DETHMERS, as Justice of said Supreme Court and in his Individual capacity, and LELAND W. CARR, as Justice of said Supreme Court and in his Individual capacity, and HARRY F. KELLY, as Justice of said Supreme Court and in his Individual capacity, and TALBOT SMITH, as Justice of said Supreme Court and in his Individual capacity, and EUGENE F. BLACK, as Justice of said Supreme Court and in his Individual capacity, and GEORGE EDWARDS, as Justice of said Supreme Court and in his Individual capacity, and JOHN D. VOELKER, as ex-Justice of said Supreme Court and in his Individual capacity, and EDWARD M. SHARPE, as ex-Justice of said Supreme Court and in his Individual capacity,

Respondents.

I

COUNTER-STATEMENT OF FACTS

Respondents, the Supreme Court of Michigan, hereby adopts the counter-statement of material facts as set out by respondents, State Bar of Michigan, in their brief (pp 2-8).

Respondents further refer the Court to the statement of facts contained in the opinion of the United States Court of Appeals for the Sixth Circuit (App A—petitioner's petition pp 28-29).

II

ARGUMENT

Are the members of the Supreme Court of Michigan, defendants herein, immune from civil liability for acts done in the course of their official duties as judicial officers?

The District Court answered this question "Yes."

The Circuit Court of Appeals, Sixth Circuit, answered this question "Yes."

Appellee answers this question "No."

Respondents answer this question "Yes."

A. The rule of judicial immunity set out in Bradley v. Fisher is applicable to the actions of the Supreme Court of Michigan.

The rule as to judicial immunity was clearly set out by this Court in 1871 in the case of *Bradley v. Fisher*, 80 US 335; 14 Wall. 335, as follows:

> "• • • judges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly."

This rule has been followed repeatedly, and without deviation, by this Court since that time. See *Spalding v. Vilas*, 161 US 493; *Adair v. Bank of America Association*, 303 US 358; and *Barr v. Matteo*, 360 US 569.

The Circuit Court of Appeals for the Sixth Circuit followed it implicitly in its opinion in this case: (p 33 petitioner's brief)

> "• • • Judges are immune from suit arising out of their judicial acts and the civil rights statutes create no exception in this rule. *Bradley v. Fisher*, 80 U.S. 335; 13 Wall. 335; *Kenney v. Fox*, 232 F. 2d 288, C. A. 6; *Allen v. Groat*, 283 F. 2d 692, C. A."

Therefore, even though petitioner's actions are brought under the civil rights statute, this in no way minimizes the applicability of the rule of judicial immunity in respect to the Supreme Court of the State of Michigan.

B. The exception to the rule of judicial immunity is not applicable.

Petitioner cites the cases of *Manning v. Ketcham*, 58 F2d 948, and *McShane v. Moldovan*, 172 F2d 1016, as authority for the proposition that a judge is without judicial immunity when he acts without jurisdiction. This Court, in *Bradley v. Fisher, supra*, clearly distinguished the situation where an excess of jurisdiction existed as opposed to an absence of jurisdiction, as follows:

> "• • • A distinction must be here observed between excess of jurisdiction and the clear absence of all jurisdiction over the subject-matter. Where there is clearly no jurisdiction over the subject-matter any authority exercised is a usurped authority, and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible. But where jurisdiction over the subject-matter is invested by law in the judge, or in the court which he

holds, the manner and extent in which the jurisdiction shall be exercised are generally as much questions for his determination as any other questions involved in the case, although upon the correctness of his determination in these particulars the validity of his judgments may depend."

In the *Manning Case*, the Circuit Court of Appeals, Sixth Circuit, recognized this distinction in affirming a lower court's decision that a judge was acting without his jurisdiction.

In the *McShane Case*, the Court merely found that a cause of action over which the District Court had jurisdiction existed and remanded the matter for trial.

The jurisdiction of the Supreme Court of Michigan to hear petitioner's action for a writ of mandamus is clear, there being no other State appellate court to which such a petition could be made. No question has ever been raised by petitioner as to the Supreme Court of Michigan's lack of jurisdiction to grant the requested writ of mandamus, had it so desired. The opinion of the court below (p 32 petitioner's brief) covers this matter very succinctly:

"The appellant has alleged in his complaint that he twice petitioned the Supreme Court of Michigan for a writ of mandamus to require the State Bar officers to process his request for investigation and that his petitions were twice denied. This was a proper forum and if there were constitutional questions involved he could have petitioned the Supreme Court of the United States for certiorari. The District Court cannot review the proceedings of the Supreme Court of Michigan. Having pursued a remedy in a proper forum and in a court with jurisdiction to hear his cause, we are of the

opinion that a denial of relief by that court terminated the appellant's litigation to require further action by the State Bar."

III

CONCLUSION

The respondents respectfully pray that a writ of certiorari to the United States Court of Appeals for the Sixth Circuit be denied to the petitioner.

Respectfully submitted,

PAUL L. ADAMS
Attorney General of Michigan

Joseph B. Bilitzke
Solicitor General of Michigan

Attorneys for Respondents
Supreme Court of Michigan

The Capitol
Lansing, Michigan